

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**May 18, 2004**

<b>IN RE:</b>	)	
	)	<b>DOCKET NO.</b>
<b>GENERIC DOCKET ADDRESSING</b>	)	<b>00-00523</b>
<b>RURAL UNIVERSAL SERVICE</b>	)	

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**ORDER ON SUBPOENA DUCES TECUM**

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This docket came before the Hearing Officer for consideration of the attached *Subpoena Duces Tecum* submitted on April 30, 2004 by counsel for the Rural Independent Coalition<sup>1</sup> ("Coalition"). The subpoena commands BellSouth Telecommunications, Inc. ("BellSouth") to produce certain documents related to BellSouth's filings with the Federal Communications Commission and business relationships with commercial mobile radio service providers and the Coalition.

Generally deficiencies in a subpoena are raised in a motion to quash filed after the service of the subpoena.<sup>2</sup> In this instance, however, there is an apparent procedural flaw that prevents the Hearing Officer from signing the subpoena. Specifically, it appears that the Coalition is attempting to use Authority Rule 1220-1-2-.13 to obtain information in advance of obtaining the information through the Authority's discovery rule, Rule 1220-1-2-.11.

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<sup>1</sup> The Coalition is comprised of the following companies: Ardmore Telephone Company, Inc , Ben Lomand Rural Telephone Cooperative, Inc.; Beldsoe Telephone Cooperative, CenturyTel of Adamsville, Inc , CenturyTel of Claiborne, Inc , CenturyTel of Ooltewah-Collegedale, Inc.; Concord Telephone Exchange, Inc.; Crockett Telephone Company, Inc., Dekalb Telephone Cooperative, Inc., Highland Telephone Cooperative, Inc , Humphreys County Telephone Company; Loretto Telephone Company, Inc ; Millington Telephone Company, North Central Telephone Cooperative, Inc., Peoples Telephone Company; Tellico Telephone Company, Inc , Tennessee Telephone Company; Twin Lakes Telephone Cooperative Corporation, United Telephone Company, West Tennessee Telephone Company, Inc ; and Yorkville Telephone Cooperative

<sup>2</sup> See Tenn R Civ P Rule 45.02

Authority Rule 1220-1-2-.13 explicitly prohibits circumvention of the Authority's discovery process. This rule provides:

At the request of any party, the Chair of the Authority or the Hearing Officer shall issue signed subpoenas, including subpoenas duces tecum, in blank in accordance with the Tennessee Rules of Civil Procedure, except that service in contested cases may be by certified, return receipt mail, in addition to the means of service provided in the Tennessee Rules of Civil Procedure. Parties shall complete and serve their own subpoenas. This section may not be used to circumvent the provisions of Rule 1220-1-2-.11.<sup>3</sup>

Authority Rule 1220-1-2-.11 sets forth the Authority's procedures for discovery. Those procedures permit a party to obtain information from other parties by filing a petition for discovery when attempts at informal discovery have failed and provide protections against abuse of the process.<sup>4</sup>

The subpoena before the Hearing Officer requests certain information from BellSouth, a party to this case that is subject to discovery. Because the Coalition filed the subpoena without attempting to obtain the information pursuant to Rule 1220-1-2-.11, it appears that Rule 1220-1-2-.13 is being used to circumvent Rule 1220-1-2-.11. This action is prohibited by Rule 1220-1-2-.13.

Additionally, the purpose for which the Coalition seeks the requested information in this docket is not clear. At the time the Coalition submitted the subpoena for signature, the Hearing Officer was considering the comments filed pursuant to the *Order on February 17, 2004 Telephonic Status Conference* and did not anticipate any further arguments on the issues addressed in those comments.<sup>5</sup> While the Authority has yet to resolve each of the issues for

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<sup>3</sup> Tenn Comp R. & Regs. 1220-1-2- 13 (Rev July 2003).

<sup>4</sup> See *id* 1220-1-2- 11(1) & (2)

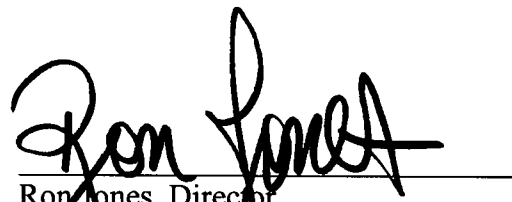
<sup>5</sup> The Hearing Officer issued an order addressing the comments on May 6, 2004. See *Order Granting in Part the Petition for Emergency Relief and Request for Standstill Order by the Tennessee Rural Independent Coalition* (May 6, 2004)

which this docket was convened to address, the only action anticipated in the near future is consideration of *BellSouth Telecommunications Inc.'s Motion for Reconsideration or, in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Pre-Hearing Officer Filed on November 8, 2000*. Each party asserted its position on this motion in the comments filed pursuant to the *Order on February 17, 2004 Telephonic Status Conference*. Given the procedural posture of this docket, there appears no need for a subpoena at this time.

Given the circumstances described above, it is the opinion of the Hearing Officer that it is inappropriate to sign the attached *Subpoena Duces Tecum*.

**IT IS THEREFORE ORDERED THAT:**

The *Subpoena Duces Tecum* submitted on April 30, 2004 by counsel for the Rural Independent Coalition will not be signed by the Hearing Officer, and any similar subpoena submitted in the future shall be accompanied by a statement addressing the issues raised in this order.

  
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Ron Jones, Director  
As Hearing Officer

Director Ron Jones  
Hearing Officer  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

## ATTACHMENT A

### REQUESTS FOR PRODUCTION

1. Copies of all effective interconnection agreements approved by the TRA (or its predecessor) between BellSouth and each CMRS provider covering the period from August 8, 1996 to the present.
2. Copies of all other agreements, contracts and documents between BellSouth and each CMRS provider covering the period from August 8, 1996 to the present.
3. Copies of all correspondence or any other documented communications between BellSouth and each CMRS Provider (including, but not limited to correspondence between counsel) that address, discuss, or refer to "meet-point billing" or any interconnection arrangement that is associated with traffic terminated on a rural Independent network, or discusses, in any way the issues in this proceeding or the arbitration involving the CMRS providers and the Rural Independent Coaliton.
4. Copies of all filings by your company (including, but not limited to comments and *ex partes*) before the Federal Communications Commission in FCC Docket 01-92.
5. Copies of any agreements that set forth the terms and conditions pursuant to which BellSouth has terminated traffic to each rural Independent covering the period from August 8, 1996 to the present.
6. Copies of any arrangements, contracts or agreements that address or refer to any terms and conditions that relate, in any way, to an obligation of a CMRS provider to compensate or reimburse Bellsouth with respect to any charges paid by BellSouth to any rural Independent.

7. Copies of any agreements entered into by BellSouth, one or more CMRS Providers and one or more local exchange companies (other than BellSouth) that address any issues that are similar to the issues pending in this proceeding.

8. Copies of any documents, arrangements, law or regulation that permits BellSouth to deliver any traffic for termination on the network of a rural Independent in the absence of contract or tariff.

9. Copies of any document that demonstrates or reflects a request by BellSouth to establish terms and conditions pursuant to which BellSouth delivers the traffic of a CMRS Provider to the network of the rural Independent.

10. Copies of all documents that contain information from which the following information can be calculated or determined: the number of minutes of traffic per month that your company transported on behalf of each CMRS Provider to each rural Independent by month for the prior 24 month period, either in the aggregate (i.e., all CMRS providers) or by individual CMRS provider.